

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANCISCO MERINO,

Plaintiff,

v.

ARYA, et al.,

Defendants.

No. 2:22-cv-01132-DAD-DMC (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
DEFENDANTS' MOTION TO DISMISS
WITH LEAVE TO AMEND

(Doc. No. 36, 43)

Plaintiff Francisco Merino is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 11, 2025, the assigned magistrate judge issued findings and recommendations recommending that defendants' motion to dismiss (Doc. No. 36), be granted and that plaintiff be granted a final opportunity to amend his complaint. (Doc. No. 43.) Specifically, the magistrate judge concluded that in his second amended complaint plaintiff had failed to allege facts sufficient to establish, if proven, that defendants were deliberately indifferent to his serious medical needs. (*Id.* at 6.)

The pending findings and recommendations were served on the parties and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 7.) To date, no objections to the findings and recommendations have been filed, and the time in

1 which to do so has now passed.

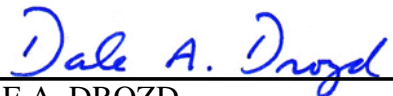
2 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
3 de novo review of the case. Having carefully reviewed the entire file, the court concludes that the
4 findings and recommendations are supported by the record and by proper analysis.

5 Accordingly:

- 6 1. The findings and recommendations filed June 11, 2025 (Doc. No. 43), are adopted
7 in full;
- 8 2. Defendants' motion to dismiss (Doc. No. 36), is granted;
- 9 3. Plaintiff's second amended complaint is dismissed and plaintiff is granted one
10 final opportunity to allege facts sufficient to state a claim of deliberate indifference
11 to his serious medical needs;
- 12 4. If plaintiff wishes to continue to pursue this action he must file a third amended
13 complaint addressing the pleading deficiencies noted in the findings and
14 recommendations within thirty (30) days of the date of this order. His failure to do
15 so will result in the dismissal of this case; and
- 16 5. This matter is referred back to the assigned Magistrate Judge for further
17 proceedings.

18 IT IS SO ORDERED.

19 Dated: August 15, 2025

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21 DALE A. DROZD
22 UNITED STATES DISTRICT JUDGE
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